

MILLIER LAW, INC.  
JENNIFER M. MILLIER (SBN 253814)  
10100 Venice Boulevard  
Culver City, CA 90232  
Telephone: 310.579.9550  
Email: [jennifer@millierlaw.com](mailto:jennifer@millierlaw.com)

Attorney for Creditor  
ACE FUNDING SOURCE, LLC

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA – RIVERSIDE DIVISION**

In re:

VARIO CORP.,

Debtor.

ACE FUNDING SOURCE, LLC, a  
New York limited liability company,

Plaintiff and Creditor,

v.

VARIO CORP., a California  
corporation, and Does 1-10,

Defendants and Debtors.

Case No. 6:18-bk-19730-WJ  
Chapter 11

**CREDITOR ACE FUNDING  
SOURCE, LLC'S COMPLAINT FOR  
NON-DISCHARGEABILITY OF  
DEBT AND OBJECTION TO  
DISCHARGE PURSUANT TO 11  
U.S.C. §§ 523 AND 727, ET SEQ.**

~~HEARING DATE: MARCH 28, 2019~~

~~HEARING TIME: 1:30 PM~~

~~HEARING DEPT.: 304~~

~~LOCATION: 3420 TWELFTH~~

~~STREET~~

~~RIVERSIDE, CA 92501~~

Petition filed November 16, 2018  
Objections due February 19, 2019  
Meeting of Creditors March 7, 2019

**BY FAX**

**SUMMARY OF CLAIMS**

1  
2 1. Less than three weeks before it filed for voluntary Chapter 11  
3 bankruptcy, defendant and debtor Vario Corp. obtained \$125,000 from plaintiff and  
4 creditor Ace Funding Source, LLC (“AFS”) through fraudulently misrepresenting  
5 material facts and affirming to AFS that it was not contemplating bankruptcy – or had  
6 even consulted with a bankruptcy attorney six months prior to obtaining the \$125,000.  
7 These misrepresentations were patently false and induced AFS into providing the  
8 \$125,000, which it never would have had it known about Vario Corp.’s plotted  
9 bankruptcy. AFS relied on Vario Corp.’s misrepresentations to its detriment and now  
10 asks this Court for an order finding that the debt owed to AFS – now totaling  
11 \$241,459.07 – is non-dischargeable, along with all other available relief and damages.

**JURISDICTION AND VENUE**

12  
13 2. This Court has jurisdiction over this action pursuant to the United States  
14 Bankruptcy Code, 11 U.S.C. § 523, et seq.; 11 U.S.C. § 727, et seq.; 28 U.S.C. § 1331;  
15 and/or 28 U.S.C. § 1334. This adversary proceeding relates to this case under Chapter  
16 11 of the Bankruptcy Code, now pending in this Court. This is a core proceeding under  
17 28 U.S.C. § 157(b)(2)(I).

18 3. Venue is proper in this judicial district pursuant to 28 U.S.C. §  
19 1391(b)(1); 28 U.S.C. § 1391(b)(2); and/or 28 U.S.C. § 1391(b)(3).

**PLAINTIFF**

20  
21 4. Plaintiff Ace Funding Source, LLC (“Plaintiff”) is a limited liability  
22 company duly organized under the laws of the state of New York with a principal  
23 place of business in Jericho, New York. Plaintiff is a creditor of debtor/defendant,  
24 having a claim with an outstanding balance in the amount of \$241,459.07.

**DEFENDANT**

25  
26 5. Plaintiff is informed and believes, and on that basis alleges, that  
27 defendant Vario Corp. (“Defendant”) is a corporation organized under the laws of the  
28

1 state of California with its principal place of business in Chino, California. Defendant  
2 is a debtor of Plaintiff.

3 **STATEMENT OF FACTS<sup>1</sup>**

4 6. In or around October 2018, AFS received an application from debtor  
5 Vario Corp. seeking \$125,000.00 from AFS in exchange for the sale of debtor Vario  
6 Corp.'s future receipts. AFS provided this \$125,000.00 to debtor Vario Corp. on or  
7 about October 31, 2018 pursuant to the terms of a written agreement for the purchase  
8 and sale of future receipts (the "AFS Agreement"). A true and correct copy of the  
9 AFS Agreement is attached hereto as Exhibit 1. Per Section 13.7 of the AFS  
10 Agreement, debtor Vario Corp. affirmed that as of the date of the AFS Agreement,  
11 Vario Corp. "is not insolvent and does not contemplate and has not filed any petition  
12 for bankruptcy protection under any Title of the United States Code and there has  
13 been no involuntary petition brought or pending against [Vario Corp.]." Vario Corp.  
14 further represented that "it has not consulted with a bankruptcy attorney within six  
15 months prior to the date of this Agreement" and "further warrants that it does not  
16 anticipate filing a bankruptcy petition and it does not anticipate that an involuntary  
17 petition will be filed against it." See AFS Agreement at Section 13.7 "No Pending or  
18 Contemplated Bankruptcy."

19 7. Following execution of the AFS Agreement, AFS provided debtor Vario  
20 Corp. with \$125,000.00. AFS filed a UCC Financing Statement reflecting this  
21 indebtedness on or about November 16, 2018 ("AFS UCC Financing Statement"). A  
22 true and correct copy of the AFS UCC Financing Statement is attached hereto as  
23 Exhibit 2.

24 8. After AFS provided debtor Vario Corp. with \$125,000.00 per the terms  
25 of the AFS Agreement, AFS received just two payments from debtor Vario Corp.

26  
27 <sup>1</sup> All statements in this Statement of Facts are contained in the accompanying "DECLARATION OF  
28 CREDITOR ACE FUNDING SOURCE, LLC'S HENRY GUTMAN IN SUPPORT OF COMPLAINT FOR NON-  
DISCHARGEABILITY OF DEBT AND OBJECTION TO DISCHARGE PURSUANT TO 11 U.S.C. §§ 253 AND 727,  
ET SEQ.," filed concurrently herewith.

1 before Vario Corp. ceased payments altogether. This constituted a default under the  
2 terms of the AFS Agreement. Therefore, AFS obtained a Judgment by Confession  
3 from the Supreme Court of the State of New York, Ontario County, entered on or  
4 about November 19, 2018 (“AFS Judgment”). A true and correct copy of the AFS  
5 Judgment is attached hereto as Exhibit 3. The total amount of the AFS Judgment,  
6 including the amount confessed (less payments received), attorney’s fees confessed,  
7 costs by statute and filing fee, totals \$241,459.07.

8 9. After AFS obtained its AFS Judgment against Vario Corp., AFS  
9 discovered that Vario Corp. had filed this voluntary Chapter 11 bankruptcy  
10 proceeding. AFS would never have provided Vario Corp. the \$125,000.00, or any  
11 amount, had it known that Vario Corp. was all the while planning to file for  
12 bankruptcy. AFS would be severely prejudiced if it were forced to wait in line with  
13 other creditors (or worse, get behind other creditors). AFS believes that Vario Corp.  
14 defrauded AFS by misrepresenting its financial condition in order to induce AFS to  
15 agree to the terms of the AFS Agreement and provide \$125,000.00. Further, Vario  
16 Corp. did not list AFS’ full address (missing the suite number); the only fair reading  
17 and implication from this is that Vario Corp. did not want AFS to be paid.

18 **FIRST CAUSE OF ACTION**

19 **FRAUD - VIOLATION OF 11 U.S.C. § 523(a)(2)(A)**

20 11 U.S.C. § 523, et seq.

21 (Against Defendant and Does 1-10)

22 10. Plaintiff incorporates by reference the allegations contained in the  
23 preceding paragraphs 1-9 inclusive, as though fully set forth herein.

24 11. Pursuant to 11 U.S.C. § 523(a)(2)(A):

25 **(a)** A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of  
26 this title does not discharge an individual debtor from any debt—

27 ...

28 **(2)** for money, property, services, or an extension, renewal, or  
refinancing of credit, to the extent obtained by—

1 (A) false pretenses, a false representation, or actual fraud,  
2 other than a statement respecting the debtor's or an insider's  
financial condition; ...

3 12. Pursuant to 11 U.S.C. 523(c)(1):

4 Except as provided in subsection (a)(3)(B) of this section, the debtor shall  
5 be discharged from a debt of a kind specified in paragraph (2), (4), or (6)  
6 of subsection (a) of this section, unless, on request of the creditor to whom  
such debt is owed, and after notice and a hearing, the court determines such  
7 debt to be excepted from discharge under paragraph (2), (4), or (6), as the  
case may be, of subsection (a) of this section.

8 13. Plaintiff provided money to Defendant, per the terms of the AFS  
9 Agreement, following Defendant's representation and affirmation that it was not  
10 contemplating or planning to file bankruptcy, as more specifically described above in  
11 Paragraph 6 and in Section 13.7 of the AFS Agreement (Exhibit 1 hereto).

12 14. Defendant knew at the time it made this representation (October 31,  
13 2018, the date of the AFS Agreement) that it was false. Court records reflect that  
14 Defendant filed for voluntary Chapter 11 bankruptcy just seventeen (17) days later, on  
15 November 16, 2018. There is no way that Defendant could have consulted with a  
16 bankruptcy attorney, prepared the necessary paperwork and filed for bankruptcy in  
17 less than three weeks; Defendant was planning this all along.

18 15. Plaintiff reasonably relied on Defendant's false representations in  
19 providing Defendant the \$125,000 per the terms of the AFS Agreement.

20 16. As a direct and proximate result of Defendant's false representations and  
21 misconduct, Plaintiff has sustained and will continue to sustain substantial and  
22 immediate damages. As a result, Plaintiff is entitled to actual and/or statutory damages  
23 against Defendant, in amounts to be determined, but not less than \$241,459,07, plus  
24 interest, attorney's fees and costs as allowed by law.

25 ///

26 ///

27 ///

**SECOND CAUSE OF ACTION**

**FRAUD - VIOLATION OF 11 U.S.C. § 523(a)(2)(B)**

11 U.S.C. § 523, et seq.

(Against Defendant and Does 1-10)

17. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs 1-16 inclusive, as though fully set forth herein.

18. Pursuant to 11 U.S.C. 523(a)(2)(B):

(B) use of a statement in writing—

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive; ...

19. Pursuant to 11 U.S.C. 523(c)(1):

Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

20. Plaintiff provided money to Defendant, per the terms of the AFS Agreement, following Defendant's material representation and affirmation that it was financially solvent, as more specifically described in Section 13.3 of the AFS Agreement (Exhibit 1 hereto).

21. Defendant knew at the time it made this material representation (October 31, 2018, the date of the AFS Agreement) about its financial condition that it was false. Plaintiff believes that Defendant made this materially false representation in order to deceive Plaintiff and induce it into agreeing to the terms of the AFS Agreement.

22. Plaintiff reasonably relied on Defendant's materially false representations in providing Defendant the \$125,000 per the terms of the AFS Agreement.



23. As a direct and proximate result of Defendant's materially false representations and misconduct, Plaintiff has sustained and will continue to sustain substantial and immediate damages. As a result, Plaintiff is entitled to actual and/or statutory damages against Defendant, in amounts to be determined, but not less than \$241,459.07, plus interest, attorney's fees and costs as allowed by law.

**WHEREFORE**, Plaintiff prays for judgment against Defendant as follows:

1. For an order finding Plaintiff's claim is non-dischargeable (within the meaning of the United States Bankruptcy Code) and allowing Plaintiff's claims to proceed against Defendant in the appropriate forum, including collection of judgment;
2. For an award of damages according to proof;
3. For the costs of this action;
4. For reasonable attorneys' fees, as provided by law; and
5. For such other and further relief as the Court deems just and proper.

Date: February 18, 2019

MILLIER LAW, INC.


  
JENNIFER M. MILLIER, ESQ.  
Attorney for Plaintiff and Creditor  
ACE FUNDING SOURCE, LLC

B1040 (FORM 1040) (12/15)

<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)		<b>ADVERSARY PROCEEDING NUMBER</b> (Court Use Only)
<b>PLAINTIFFS</b>  ACE FUNDING SOURCE, LLC	<b>DEFENDANTS</b>  VARIO CORP.	
<b>ATTORNEYS</b> (Firm Name, Address, and Telephone No.) MILLIER LAW, INC. 10100 VENICE BOULEVARD, CULVER CITY, CA 90232 (310) 579-9550	<b>ATTORNEYS</b> (If Known) LO & LO LLP 506 N. GARFIELD AVENUE, SUITE 280 ALHAMBRA, CA 91801 (626) 289-8838	
<b>PARTY</b> (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	<b>PARTY</b> (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) FRAUD - VIOLATION OF 11 U.S.C. 523(a)(2)(A) FRAUD - VIOLATION OF 11 U.S.C. 523(a)(2)(B)		
<div style="font-size: 2em; font-weight: bold; opacity: 0.5;">BY FAX</div>		
<b>NATURE OF SUIT</b>  (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
<b>FRBP 7001(1) – Recovery of Money/Property</b> <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other  <b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b> <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property  <b>FRBP 7001(3) – Approval of Sale of Property</b> <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)  <b>FRBP 7001(4) – Objection/Revocation of Discharge</b> <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)  <b>FRBP 7001(5) – Revocation of Confirmation</b> <input type="checkbox"/> 51-Revocation of confirmation  <b>FRBP 7001(6) – Dischargeability</b> <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input checked="" type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny  (continued next column)	<b>FRBP 7001(6) – Dischargeability (continued)</b> <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input checked="" type="checkbox"/> 65-Dischargeability - other  <b>FRBP 7001(7) – Injunctive Relief</b> <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other  <b>FRBP 7001(8) Subordination of Claim or Interest</b> <input type="checkbox"/> 81-Subordination of claim or interest  <b>FRBP 7001(9) Declaratory Judgment</b> <input type="checkbox"/> 91-Declaratory judgment  <b>FRBP 7001(10) Determination of Removed Action</b> <input type="checkbox"/> 01-Determination of removed claim or cause  <b>Other</b> <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$241,459.07	
Other Relief Sought		



**B1040 (FORM 1040) (12/15)**

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR VARIO CORP.		BANKRUPTCY CASE NO. 6:18-BK-19730-WJ
DISTRICT IN WHICH CASE IS PENDING CENTRAL DISTRICT OF CALIFORNIA	DIVISION OFFICE RIVERSIDE	NAME OF JUDGE HON. WAYNE JOHNSON
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE FEBRUARY 18, 2019	PRINT NAME OF ATTORNEY (OR PLAINTIFF) JENNIFER M. MILLIER	

**INSTRUCTIONS**

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.